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June 17, 2009

VIA ELECTRONIC FILING & U.S. MAIL

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: EchoStar Satellite Operating L.L.C.'s Application
for Minor Modification of DBS Authorization and
Authority to Launch the EchoStar 14 Satellite and
to Operate it at 118.9°W.L., FCC File No. SAT-
LOA-20090518-00053, SAT-AMD-20090604-
00064 (Call Sign S2790)

Dear Ms. Dortch:

Spectrum Five LLC (“Spectrum Five”) submits this letter regarding the above-referenced application of EchoStar Satellite Operating L.L.C. (“DISH”). Because DISH’s application failed to provide the information required under the Commission’s rules, the application must be dismissed as defective.¹ As the window for submitting a formal Petition to Dismiss or Deny does not begin until after the Commission has determined that the application is acceptable for

¹ See 47 C.F.R. § 25.112(a)(1); see also Letter from Fern J. Jarmulnek, Deputy Chief, Satellite Division of the FCC, to Todd M. Stansbury, Counsel for Spectrum Five LLC, 20 FCC Rcd 3451, FCC File No. SAT-LOI-20041228-00228 (Feb. 17, 2005) (“Spectrum Five 2005 Dismissal Letter”) (dismissing as defective Spectrum Five’s Petition for Declaratory Ruling to Serve the U.S. Market from the 114.5° W.L. Orbital Location, on the ground that Spectrum Five’s Petition did not include all the information required under 47 C.F.R. § 25.114); see also Amendment of the Commission’s Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking*, IB Docket No. 02-34, 18 FCC Rcd 10760, 10852 ¶ 244 (2003) (*First Space Station Reform Order*). Since the *First Space Station Reform Order* was adopted, the Bureau has strictly enforced its Part 25 rules and has returned numerous applications as defective. See EchoStar Satellite LLC, Application for Authority to Construct, Launch and Operate a Geostationary Satellite in the Fixed Satellite Service Using the Extended Ku-Band Frequencies at the 101° W.L. Orbital Location, *Order on Reconsideration*, 19 FCC Rcd 24953, DA 04-4056 ¶ 14 (rel. Dec. 27, 2004) (contains a partial list of dismissed applications).

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filing,² Spectrum Five seeks to provide information regarding DISH's application informally, reserving its right to file a formal petition at the appropriate time.

In its application, DISH requests authority to launch the EchoStar-14 satellite,³ and to operate it on the 21 Direct Broadcast Satellite ("DBS") channels licensed to DISH at the 119° W.L. nominal orbital location.⁴ In particular, DISH's application seeks to replace the EchoStar-7 satellite with EchoStar-14, a DBS CONUS/spot beam satellite that is capable of operating in the 12.2-12.7 GHz downlink and 17.3-17.8 GHz uplink frequency bands.⁵ Because of the fatal defects in this application, the Commission should dismiss the application as unacceptable for filing.

Section 25.112(a) of the Commission's rules provides that the Commission will return an application as unacceptable for filing if the application is defective with respect to completeness of answers or informational showings, is internally inconsistent, or does not substantially comply with the Commission's rules.⁶ Section 25.114(d) requires space station applicants to submit all relevant items of information listed in its subsections.⁷ Specifically, § 25.114(d)(13)(i) of the Commission's rules requires an applicant whose DBS system parameters differ from the ITU's Region 2 Plan to provide a "sufficient technical showing that the proposed system could operate satisfactorily if all assignments in the BSS and feeder link Plans were implemented."⁸ Moreover, § 25.114(b) makes clear that the "technical information for a proposed satellite system specified in paragraph (d) . . . should be complete in all pertinent details."⁹ The International Bureau ("the Bureau") has reminded applicants that, if an application fails to include any of the information required under § 25.114 of the Commission's rules, the Bureau will return the application as being unacceptable for filing.¹⁰

DISH's application is defective, and therefore unacceptable for filing, because it does not include the required "technical showing" under § 25.114(b) & (d)(13)(i).¹¹ DISH acknowledges in its application that operation of EchoStar-14 exceeds the limits of Annex 1 to Appendix 30 of

² See 47 C.F.R. § 25.154(a)(2).

³ See *EchoStar Satellite Operating L.L.C. Application For Minor Modification of DBS Authorization and Authority to Launch the EchoStar 14 Satellite and to Operate it at 118.9° W.L.*, File No. SAT-LOA-20090518-00053 (May 18, 2009) ("DISH Application").

⁴ See 17 FCC Rcd 894, FCC File Nos. SAT-A/O-20010810-00073, SAT-MOD-20010810-00071, Call Sign S2740 (granted Jan. 16, 2002).

⁵ See *DISH Application* at 1.

⁶ 47 C.F.R. § 25.112(a)(1).

⁷ 47 C.F.R. § 25.114(d).

⁸ 47 C.F.R. § 25.114(d)(13)(i).

⁹ 47 C.F.R. § 25.114(b).

¹⁰ See International Bureau Clarifies Direct Broadcast Satellite Space Station Application Processing Rules, *Public Notice*, Report No. SPB-198, 19 FCC Rcd 1346 (2004).

¹¹ 47 C.F.R. §§ 25.114(b) & (d)(13)(i).

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the ITU Radio Regulations with respect to the networks of the United Kingdom and the Netherlands.¹² In particular, DISH's MSPACE analysis demonstrates that more than 0.25 dB of interference would be caused to satellites authorized by Great Britain and the Netherlands, including Spectrum Five's network at the 114.5° W.L. orbital location.¹³

DISH, however, did not submit any technical showing to demonstrate that coordination with the affected Region 2 plan systems would be possible.¹⁴ Rather, DISH simply asserted that coordination with Canada would be "straightforward," but that "[c]oordination with the "tweener" filings of the UK and the Netherlands will likely not need to be completed."¹⁵

Further, DISH's comments only address the effect EchoStar-14 would have on satellites located at 110° W.L. and 129° W.L.:

"This wide orbital spacing ensures that interference into these networks will not be a problem. In this regard it should be noted that the highest peak EIRP of the ECHOSTAR-14 satellite is approximately 61 dBW, which is comparable to or less than existing operational DISH satellites at the 119° W.L. orbital cluster."

This analysis does not include a technical showing of the increased interference with Spectrum Five's satellite system at 114.5° W.L., where the interference levels from EchoStar-14 would be significantly higher, or the manner in which EchoStar-14 would address such increased interference.

Moreover, the comparison to existing EIRP levels in the analysis ignores the fact that the EIRP levels produced by the existing operational DISH satellite at the 119° W.L. orbital location result from spot beams with limited coverage areas, whereas Echostar-14 would generate comparable EIRP values in "all-CONUS" mode. As such, the peak EIRP of EchoStar-7 with spot beams covering a limited area is of little relevance to determining the potential for EchoStar-14 to interfere with other networks throughout the country. Yet DISH's application is completely devoid of a technical showing regarding the impact of operating EchoStar-14 in all-Conus mode and the manner in which DISH could achieve coordination using this new mode.

¹² See *DISH Application*, att. 1 (Technical Information Supplement to Schedule S) at A8.

¹³ See *DISH Application*, app. 1 to att. 1 at A1-6 to -13.

¹⁴ See 47 C.F.R. § 25.114(d)(13)(i) ("applicants shall provide sufficient technical showing that the proposed system could operate satisfactorily if all assignments in the BSS and feeder link plans were implemented."); see also Report & Order, *In re Policies and Rules for the Direct Broadcast Satellite Service*, 17 FCC Rcd 11331, 11380-81, pars. 107-09 (2002) ("Part 100 Order") (stressing that "the burden shall be on the applicant to show that the agreement of the affected Administration(s) can be obtained.").

¹⁵ See *DISH Application*, att. 1 at 7.

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In addition, DISH does not completely describe the operations of all the spot beam modes of the satellite, and even fails to provide the required link margins for any of the spot beam modes of operation in its Schedule S attachments (all the link margins attached refer to links with 2 or 3 TWTs combined per transponder, which must therefore be CONUS mode links). DISH's application fails to provide the technical showing required by § 25.114(d)(13)(i), and should therefore be dismissed as incomplete with regard to the requirements of § 25.114(d).

The Commission routinely dismisses applications for failure to include the information required by § 25.114(d). For example, in 2005, the Commission dismissed as incomplete Spectrum Five's Petition for Declaratory Ruling to Serve the U.S. Market from the 114.5° W.L. Orbital Location for this very reason.¹⁶ In its letter of dismissal, the Commission noted that Spectrum Five had failed to submit the "technical showing," required by § 25.114(d)(13)(i) that the proposed systems could operate satisfactorily if all assignments in the [BSS] and feeder link Plans were implemented."¹⁷ And in March of 2007, the Commission dismissed as incomplete EchoStar's modification application specifying a precise orbital location for the EchoStar-113 satellite, on the ground that EchoStar did not submit the technical information required by § 25.114(d)(14)(iii).¹⁸ Just as the Commission has dismissed these and numerous other applications for failure to provide the information required by § 25.114(d),¹⁹ it should do the same here.

¹⁶ *Spectrum Five Petition for Declaratory Ruling to Serve the U.S. Market from the 114.5° W.L. Orbital Location*, File No. SAT-LOI-20041228-00228, Call Sign 2649 (Dec. 28, 2004).

¹⁷ See Spectrum Five 2005 Dismissal Letter at 2.

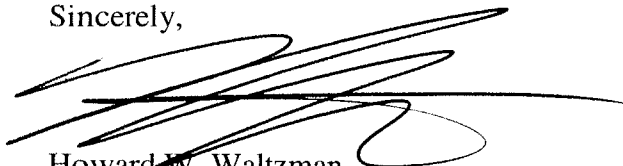
¹⁸ Letter from Robert G. Nelson, Chief, Satellite Division of the International Bureau, to David K. Moskowitz, Executive Vice-President and General Counsel for EchoStar Satellite Operating Corporation, 22 FCC Rcd 4626, FCC File No. SAT-MOD-20061218-00154 (March 8, 2007).

¹⁹ See, e.g., Letter from Scott A. Kotler, Chief, Systems Analysis Branch, Satellite Division of the International Bureau, to Tom W. Davidson, Akin Gump Strauss Hauer & Feld LLP, 24 FCC Rcd 4073, FCC File Nos. SES-MFS-20090313-00302, SES-AFS-20090323-00359, SES-MFS-20090313-00302, SES-AFS-20090323-00359 (Apr. 3, 2009) (dismissing the portion of GeoLogic's application that related to the SkyTerra-2 satellite, because that portion did not provide the technical information required by 47 C.F.R. § 25.114(d) or the Schedule S required by 42 C.F.R. § 25.114(a)); Letter from Robert G. Nelson, Chief, Satellite Division of the International Bureau, to Donald M. Jansky, Jansky-Barmat Telecommunications, Inc., 24 FCC Rcd 3970; FCC File No. SAT-PPL-20081203-00219 (Apr. 2, 2009) (dismissing petition as incomplete for failure to include the technical information required by 47 C.F.R. § 25.114(d)(14)(i) – (iv)); Letter from Scott A. Kotler, Chief, Systems Analysis Branch, Satellite Division of the International Bureau, to Stephen D. Baruch, Leventhal Senter & Lerman PLLC, 22 FCC Rcd 5372, FCC File Nos. SES-MFS-20060615-01010, SES-AMD-20061213-02137 (March 20, 2007) (dismissing Lockheed Martin's applications for failure to provide the technical information required by 47 C.F.R. § 25.114(d) or the Schedule S required by 47 C.F.R. § 25.114(a)).

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For the foregoing reasons, pursuant to Section 25.112(a) of the Commission's rules, the Commission should dismiss DISH's application as defective.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard W. Waltzman". The signature is stylized with several overlapping loops and a long horizontal stroke extending to the right.

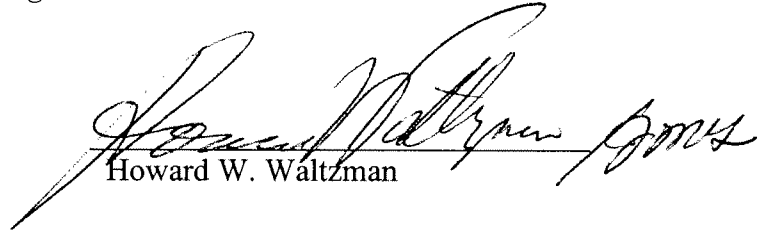
Howard W. Waltzman
Counsel to Spectrum Five LLC

cc: Pantelis Michalopoulos (*Counsel for EchoStar Satellite Operating L.L.C.*)

CERTIFICATE OF SERVICE

I, Howard W. Waltzman, hereby certify that on this 17th of June, 2009, I caused to be delivered a true copy of the foregoing by first-class United States mail, postage prepaid, upon the following:

Pantelis Michalopoulos
1330 Connecticut Avenue, N.W.
Washington, DC 20036
Counsel for EchoStar Satellite Operating L.L.C.


Howard W. Waltzman